

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JENNIFER KONCZAL,

Plaintiff,

v.

Case No. 19-12275

ZIM TIM, L.L.C.,

Defendant.

**ORDER GRANTING PLAINTIFF'S EMERGENCY MOTION TO STRIKE, DIRECTING
DEFENDANT TO CONFER WITH PLAINTIFF, AND SETTING DEADLINE FOR
DEFENDANT TO FILE A REVISED MOTION FOR SUMMARY JUDGMENT**

Plaintiff Jennifer Konczal initiated this action against Defendant Zim Tim, L.L.C., for sex discrimination under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*, and the Michigan Elliott-Larsen Civil Rights Act, Mich. Comp. Laws § 37.2101, *et seq.* Defendant is the owner and operator of a Tim Hortons restaurant in Southgate, Michigan. (ECF No. 1, PageID.2, ¶ 2; ECF No. 5, PageID.16, ¶ 2.) Defendant terminated Plaintiff's employment as a restaurant crew member due, Plaintiff alleges, to her pregnancy. (ECF No. 1, PageID.3-4, ¶¶ 13-15.)

Defendant moved for summary judgment on November 20, 2020. (ECF No. 29.) On November 23, 2020, Plaintiff moved to strike Defendant's motion because it contained unredacted personally identifiable information, and irrelevant and provocative details of Plaintiff's life and family. (ECF No. 31.) On December 2, 2020, the court held a hearing on Plaintiff's motion, and the court granted the motion on the record. See Fed. R. Civ. P. 11(b)(1) (barring motions "presented for any improper purpose, such as to

harass [the opposing party]”); Fed. R. Civ. P. 5.2(a) (barring the inclusion in court filings of complete social security numbers and the full names and dates of births of minors).

The motion for summary judgment will be stricken in its entirety. At the hearing, Plaintiff indicated that there were additional more recent filings containing similar information. Defendant was directed to confer with Plaintiff to identify which additional documents on the docket must be stricken for containing improper personal information. Further, the parties were directed to confer and agree upon a limited and reasonable attorney fees award for Plaintiff’s preparation of her motion to strike. The court stated it would address the issue of attorney fees if the parties cannot come to agreement.

Defendant will be given time to file a revised motion for summary judgment. The court expects Defendant to remove the kind of irrelevant and prejudicial information that precipitated Plaintiff’s motion to strike, as discussed and decided for the reasons stated on the record. More particularly, the court determined that the behavioral history of her children and the allegations of a history of intra-family physical abuse were utterly irrelevant to Defendant’s motion which focused on Defendant’s Title VII liability. (See ECF No. 29.) Defendant’s revised motion for summary judgment must be rectified so as to avoid the appearance of harassment and provocation. See Fed. R. Civ. P. 11(b)(1). If Defendant is unsure whether information is suitable for the public record, the court urges Defendant to confer with Plaintiff and, if agreement cannot be reached, present the potentially problematic information to the court under seal. Accordingly,

IT IS ORDERED that Plaintiff’s “Emergency Motion to Strike” (ECF No. 31) is GRANTED and Defendant’s “Motion for Summary Judgment” (ECF No. 29) is hereby STRICKEN from the docket.

IT IS FURTHER ORDERED that Defendant is DIRECTED to confer with Plaintiff to determine 1) which additional documents contain the improper personal information and 2) a reasonable attorney fees award.

The parties are DIRECTED to present a stipulation and proposed order regarding these issues by **December 23, 2020**. If no stipulation is presented, the court will initiate a telephone conference to determine the necessary course of action.

Finally, IT IS ORDERED that Defendant's deadline to file a revised motion for summary judgment is set for **December 16, 2020**.

s/Robert H. Cleland /
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 14, 2020

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 14, 2020, by electronic and/or ordinary mail.

s/Lisa Wagner /
Case Manager and Deputy Clerk
(810) 292-6522

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